

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

VENTANA MEDICAL SYSTEMS, INC.

Plaintiff,

v.

VISION BIOSYSTEMS, INC.,

Defendant.

CIVIL ACTION NO. 05-CV-10614-GAO

**MOTION TO EXTEND TIME FOR VENTANA MEDICAL SYSTEMS, INC. TO  
RESPOND TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Ventana Medical Systems, Inc. ("Ventana") moves that the time within which Ventana may respond to Defendant Vision Biosystems, Inc.'s ("Vision's") Motion for Summary Judgment of Non-Infringement be extended by four (4) weeks until July 30, 2007.

In support of this Motion, the undersigned counsel for Ventana respectfully represents, as follows:

1. Vision's Summary Judgment Motion is complex, and is based on a product regarding which Ventana has only had limited discovery. Fact discovery is on-going. In fact, the corporate deposition of Vision on topics including the structure, function, and operation of Vision's current product, that is the subject of Vision's Summary Judgment Motion, is currently scheduled for next week on June 26-27 and an inspection of that product is scheduled for June 28. On June 19, the day after Vision filed its Motion for Summary Judgment, Vision supplemented its production with 8 computer discs, 7 of which relate to the installation and operation of various versions of Vision's product. Moreover, additional supplementation of

Vision's production may be required. On June 19, Vision also noticed the corporate deposition of Ventana for August 1, 2007.

2. Ventana's expert and counsel also have significant scheduling conflicts in the first part of July which make the present extension necessary. Ventana's technical expert will be unavailable from June 29 through July 11. Of the three primary attorneys working on this matter, lead counsel Attorney Shulman will be out of the country from June 30 through July 14, Attorney Chin will be unavailable on vacation from July 8 – 21, and Attorney Stafford is counsel on a complex patent infringement matter that was recently set for pretrial conference on June 29 and trial beginning on July 2.

3. The undersigned counsel reasonably requires the additional requested time in order to complete the preparation of a response to Vision's Memorandum, and to complete preparation of Affidavits on behalf of the above-named out-of-state Plaintiff.

4. Counsel for Vision has agreed to an extension of two weeks until July 16, but opposes an extension of up to four weeks. This extension is insufficient given the aforementioned significant scheduling conflicts.

5. Defendant will suffer no harm by this requested additional four week extension. The parties had previously discussed summary judgment briefing being due in August. Fact discovery is currently on-going, and expert reports are not currently scheduled to be completed until mid-August. Trial is not set until November.

6. The undersigned counsel conferred on June 19 by telephone with Vision's counsel, Attorney Ron Sigworth, and requested the proposed extension based upon the current state of discovery, including the upcoming deposition and inspection, and Ventana's significant

scheduling conflicts. After conferring with his colleagues, Attorney Sigworth stated that Vision would agree to only a two week extension.

WHEREFORE the undersigned counsel respectfully requests of the Court that the time within which Ventana may file their response to Plaintiffs Motion for Summary Judgment of Non-Infringement be extended four (4) weeks until July 30, 2007.

Dated this 22<sup>nd</sup> day of June, 2007

VENTANA MEDICAL SYSTEMS, INC.

By its attorneys,

/s/ Christopher F. Robertson

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**LOCAL RULE 7.1 CERTIFICATION**

The undersigned confirms that the parties conferred and attempted in good faith to resolve or narrow the issues presented by the foregoing motion, but were unable to do so, as set forth in Paragraph 6 above.

/s/ Christopher F. Robertson

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **VENTANA'S MOTION TO EXTEND** was served  
via email and U.S. Mail on June 22, 2007 on the following individuals:

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/s/ Christopher F. Robertson

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**[PROPOSED] ORDER**

Having considered Ventana Medical System, Inc.'s Motion to Extend Time to Respond to Defendant's Motion for Summary Judgment, the Court orders as follows:

1. Plaintiff Ventana Medical Systems, Inc. is granted a four (4) week extension to respond to Defendant's Motion for Summary Judgment of Non-Infringement. Ventana's response is now due on July 30, 2007.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE